

IN THE UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

PROGRESSIVE AMERICAN)
INSURANCE COMPANY,)
Plaintiff,)
vs.) CIVIL ACTION NUMBER:2:06cv717-1D
CAROL THORN; JOLEEN LEEA)
COLON; DALE EUGENE)
KIRKINDOLL; ELIZABETH S.)
KIRKINDOLL; THOMAS HOLT)
KIRKINDOLL; JAMES W. GRIFFIN)
SANDRA L. GRIFFIN; PATRICK A.)
BELT; CHRISTOPHER B. BELT;)
GENE STEGMAIER; ESTATE OF)
WILLIAM R. KLAUSS, a deceased)
minor; ESTATE OF CHERETY THORN)
a deceased minor; LV STABLER)
MEMORIAL HOSPITAL; BRPT LAKE)
REHABILITATION CENTER; BUTLER)
COUNTY EMERGENCY MEDICAL)
SERVICES;)
Defendants.)

**PLAINTIFF'S RESPONSE IN OPPOSITION TO MOTION FOR SUMMARY
JUDGMENT OF DEFENDANTS, DALE KIRKINDOLL, ELIZABETH
KIRKINDOLL, AND THOMAS HOLT KIRKINDOLL**

Comes now the plaintiff, Progressive American Insurance Company ("Progressive"), and responds to the motion for summary judgment filed by defendants Dale Kirkindoll, Elizabeth Kirkindoll, and Thomas Holt Kirkindoll, as follows:

1. Progressive filed this interpleader action because it received competing claims to its policy limits as a result of an automobile accident that occurred on December 26, 2004.

2. Progressive has obtained service on defendants Dale Kirkindoll, Elizabeth Kirkindoll, Thomas Kirkindoll, James Griffin, Sandra Griffin, Patrick Belt, Gene Stegmaier, LV Stabler Memorial Hospital, BRPT Lake Rehabilitation Center, and Butler County EMS.

3. Progressive has been unable to perfect service upon defendants Carol Thorn, Joleen Colon, and Christopher Belt. Progressive has attempted service upon these defendants at multiple addresses without success.

4. Progressive has been unable to identify the personal representatives of the minor children, William Klauss and Cherety Thorn. However, it is anticipated that Carol Thorn will be able to provide this information after she is located.

5. Progressive hired an investigator who recently obtained additional potential addresses for Carol Thorn and Joleen Colon. Progressive initiated service at these addresses by certified mail. However, that service was returned unclaimed.

6. The remaining defendants are necessary to a complete resolution of in this matter.

7. It is premature to grant the defendants' motion for summary judgment before all defendants have been served.

WHEREFORE, above premises considered, Progressive moves that the court deny defendants' motion for summary judgment at this time to allow for the additional defendants to be served.

/s/ R. Larry Bradford

R. Larry Bradford, Attorney for
Progressive American Insurance Company
Attorney Bar Code: BRA039

OF COUNSEL:

Bradford & Sears, P.C.
2020 Canyon Road
Suite 100
Birmingham, AL 35216
(205)871-7733

CERTIFICATE OF SERVICE

I hereby certify that I have this the 18th day of April, 2007, served a copy of the foregoing to all attorneys of record by placing a copy of same in the United States Mail, postage prepaid and properly addressed as follows:

Mathew Richardson, Esq.
Sidney W. Jackson, III., Esq.
Jackson, Foster & Graham
P.O. Box 2225
Mobile, AL 36602

Ronald G. Davenport, Esq.
P.O. Box 270
Montgomery, Alabama 36101-0270

Edgar M. Elliott, IV, Esq.
505 North 20TH Street, Suite 1800
Birmingham, Alabama 35203

Jimmie R. Ippolito, Jr., Esq.
1409 Coliseum Boulevard
Montgomery, Alabama 36130

/s/ R. Larry Bradford
OF COUNSEL